

State of the Judiciary
Given by Chief Justice John T. Broderick, Jr.
Before a Joint Session of the
New Hampshire Legislature on
February 21, 2007

Madam Speaker, Madam President, Governor Lynch, distinguished members of the House and Senate, my judicial colleagues, leaders of the state bar and honored guests: I stand here today as the Chief Justice of a judicial system buffeted by change and confronted with both new challenges and new opportunities. The state courts have been fortunate to have extraordinary judges, masters and staff who are doing all they reasonably can do with the resources they have to ensure that the courts remain relevant, adaptive and responsive in this new century. But I would be less than candid if I did not tell you that our state courts are laboring under great strain. Each year we deal with more than 225,000 cases. Our staff of 596, for whom I have great affection and gratitude, has stepped up every time I have asked, but there are limits and I believe we have reached them.

Almost everything around us is changing, often faster than we would like, and the courts need to change, too. The train for this new century is leaving and we need to be on it. We are, in my view, at a critical crossroads and all of you in this great hall will largely decide the future of the state courts and whether they will be meaningfully open to all of our citizens, and whether they will deliver timely justice. The challenge facing the state courts is more daunting than it has ever been, in my almost 12 years on the Supreme Court, but with your assistance and your support we are committed to success.

I am anxious to work with all of you in this legislative session to ensure that justice is truly available to all who seek it. In my judgment we need to be bold and farsighted in our vision and our actions. Many, many people we do not know and will never likely meet are depending on us. Marching in place will no longer allow the justice system to meet its responsibilities, maintain public trust and confidence and fulfill the fundamental promises of our constitution.

When I assumed my new position in 2004, I committed myself to do all within my power to make justice in New Hampshire more accessible, affordable and understandable. We are making progress. I also committed the judicial branch to transparency, cooperation and dialogue with the other branches of state government. We have stood by that pledge while at the same time honoring the independence the people enshrined in Part I, Article 37 of our state constitution.

Our branches of government, yours and mine, in the discharge of their respective duties will, from time to time, experience awkward disagreements and conflicting points of view. While never pleasant, those moments are part of the fabric of our democracy and should never keep us from our broader responsibilities. Our New Hampshire Constitution requires cooperation among and between the branches of government and reminds us of our shared commitment to our fellow citizens and

to effective government. I am here this morning in the spirit of cooperation and our common dedication to the people of New Hampshire.

Let me tell you, as briefly as I can, what has transpired these last two years before I identify the four great challenges that lie before us.

Two years ago the family division was in two counties at eight locations. Today, through the tireless efforts of Judges Kelly, Korbey and Carbon, their administrators and dedicated staff, the family division will be in eight counties and 22 locations before this year is out. It represents the largest single change in the court system in a generation. It was a change initiated by this Legislature, and is intended to better serve those families who face challenge, change and hardship. I am proud of our progress and of the exceptional job our judges, masters and staff have done to make that progress possible.

Two years ago we had no mediation at any of our thirty-six district court locations. Today, because of your help, before this month is done we expect to have mediation in virtually all district courts across our state for small claims matters. Many cases are settling and mediation is proving a successful alternative to appearing before a judge. It gives parties both a stake and a hand in crafting mutually acceptable solutions. Parties who design their own result are more likely to abide by it. Going forward I would like to see mediation used more broadly on a variety of disputes in the district courts. I am convinced that such an expansion will pay dividends for both the people and the courts. I welcome your ideas and I need your help to make that happen.

In family division sites mediation plays a central role in crafting parenting plans and helps keep the focus on the children when a marriage dissolves. In the probate court where new administrative Judge David King now presides, mediation is more popular than ever – and more effective.

At my request, Justice Dalianis of the Supreme Court chaired a committee, which had legislative representation, to study ADR throughout the Judicial Branch. The committee, which had broad representation, including Judges Morrill and Conboy of the Superior Court, focused much of its attention on infusing the Superior Court with a re-invigorated statewide alternative dispute resolution system beyond the voluntary ADR program that exists under Rule 170 in four counties. The plan is based upon the model used in the state of Maine where they have been successful in resolving a significant percentage of all new case filings within a year of entry. I am confident after public input, and with your financial assistance, that we will adopt a comparable system this calendar year. We need to build off-ramps for those who use the courts and ADR expansion is absolutely critical to that mission.

Our budget requests \$137,500 in the first year of the biennium for a Judicial Branch Office of Alternative Dispute Resolution. It is my hope and expectation that the office would be largely self-funded after the first year through modest registration and transaction fees. It would oversee system-wide ADR implementation,

performance and quality control and also serve as a resource for individuals and businesses who are interested in resolving their differences without the need to file suit. I am confident that the private marketplace would welcome such a service. It is long overdue. It is an opportunity we cannot afford to miss. ADR is a critical part of any 21st century court system and without it we will fall further behind.

Because incarceration is not always the best answer in every delinquency and criminal case, the Judicial Branch through private grant money, now has both juvenile and adult drug court dockets in several district courts and in one superior court location. The drug courts are helping some people to turn their lives around, stay with and support their families and ultimately become productive citizens. The counties should embrace drug courts because they lessen the overall cost of incarceration. Saving money while saving lives makes sense and we need to expand the number of problem-solving courts to be certain this happens. I encourage you to help us make this tomorrow's reality.

Thanks to legislative action in 2002, Cheshire County has a mental health docket at the Keene District Court for non-violent offenders with mental health issues. It costs much more to incarcerate an inmate in the Cheshire County House of Correction than to medicate the same person appropriately so he or she can stay in the community with their families, report regularly to the court and hopefully retain employment. Sound justice and good economics need not be in conflict. The Nashua District Court recently established its own mental health docket and I congratulate Judges Leary and Bamberger for their initiative. We need to expand such dockets around our state. Their time is here. Their promise is great.

In the Superior Court, Chief Justice Lynn has adopted individual docketing, which has improved both efficiency and accountability. For the first time ever, the Superior Court now has a weighted caseload system designed by the National Center for State Courts to help us and you assess how many fulltime judges are needed to do the work on their dockets. It shows the need for two new Superior Court judges even after all marital cases are transferred to the family division. A vibrant Superior Court is essential to the welfare of our citizens. I hope you will support our request for two new judges.

Most recently, Judge Lynn and I have been discussing the establishment of a "business court docket" in a central Superior Court location to give more specialized and timely attention to disputes between or involving businesses. It would be an opt-in system. Similar dockets exist in many states around the country and I believe a "business court docket" would improve customer service and be well received by the people and businesses in New Hampshire. There is no downside to trying.

In June 2006 the Citizens Commission, which the Supreme Court appointed in April 2005, provided its thoughtful and far-reaching report on the needs and challenges of the state judicial system. It is an extraordinary piece of work generated by approximately 100 citizens, two-thirds of whom were non-judges and non-lawyers.

It was chaired by two dedicated citizens, Will Abbott and Kathy Eneguess, with no agenda. The Commission had no limits placed on its inquiry.

The report makes 30 recommendations, from ADR to technology enhancement, to criminal justice reform, to customer service, to staffing needs, to case processing. The report serves as the basis of our strategic budgeting for this biennium and beyond. In fact, for the first time in Judicial Branch history a layperson who served on the Commission chaired a two-day Judicial Branch retreat, which formulated our strategic plan and budget. I commend the Commission's work product to you. It reflects the wisdom of our fellow citizens and does an outstanding job of mapping the essential needs of the court system going forward.

More than two years ago the Supreme Court appointed a committee to study public access to court documents. It was diverse and included members of the press, the public and this Legislature. The committee's suggested rule changes will soon go out for public comment. I expect that we will adopt a comprehensive public access policy this year, which will enhance access to court files while protecting personal and confidential information in which parties have a reasonable expectation of privacy.

Finally, the Judicial Branch is deploying a new case management system, as a direct result of your generous appropriation, in all trial courts across the state. Thus far, it has been installed in 13 district courts. When its rollout is completed, each courthouse will have at least one free public access terminal so that the public can access forms, court files and related information without ever having to go to the counter. The Odyssey system will also allow for remote access and will serve as a platform for future electronic filing. It will also serve as a great source for data retrieval and will ensure uniformity of process in all our courts. It will also ensure Judicial Branch accountability and allow you as Legislators to access critical information so you can be satisfied that the courts are operating as efficiently and productively as possible.

In my closing minutes let me identify the four great challenges we face in the safe, effective, competent and efficient administration of justice. First, the number of parties who represent themselves is growing and in some areas the number is growing at an alarming rate. For example, in marital cases 70% of the time at least one party represents himself or herself. In the Supreme Court, in 35% to 40% of all appeals, there is at least one self-represented party. The numbers are close to 85% in the district courts and close to 40% in the probate courts. The consequences of the self-representation phenomenon are real.

The staff spends more of its time at the counter and on the phone talking to people who have little or no knowledge of the process or how to use it. It's not their fault – it is just our reality. The result is delay, a decline in staff morale and a legal community and client base increasingly frustrated by the time it takes to process and forward court orders which are so important to their lives. That is not a formula for excellence. As the citizens commission recommended, and as our budget requests,

we need more staff, especially case managers in the family division, to assist the unrepresented who are attempting to navigate the court system without the benefit of a lawyer.

To help address the challenge posed by unrepresented litigants we have adopted an ethical rule allowing for the unbundled delivery of legal services. We are one of a handful of states in the country to have done so. Simply put, a client can now pinprick the system and hire a lawyer for very discrete tasks in the litigation process. Lawyers add value and more parties will be able to afford them for limited yet critical assignments. ADR will help as will the focus and talents of the Access to Justice Commission we recently assembled to seek strategic and systemic solutions to alleviate the crush caused by the pro se volume. Justice Duggan of the Supreme Court and Chief Judge McAuliffe of the Federal Court have agreed to co-chair it. The Commission has legislative representation. We value your input and need your assistance.

The bar in New Hampshire is among the leaders in the country in providing legal services to the poor, but I am asking it to do even more. Over the last several months I have visited 17 law firms to make a personal plea to lawyers for increased help. My message was warmly received and I believe they are responding. If we, the courts, the bar and the Legislature do not aggressively address the rising tide of pro se litigants it may well swamp the administration of justice in the next few years. We need your help and your ideas. We are open to change.

You should be rightly proud of the appropriation you made for New Hampshire Legal Assistance in the last budget cycle. They, and we in the Judicial Branch, need your continued financial involvement in legal services for the poor. There are 39 fulltime lawyers in our state serving an eligible poverty population of over 200,000 people. These dedicated professionals are essential to the fair and efficient administration of justice in our state and I hope you support their funding request for this biennium. I also respectfully ask that you look favorably on the budget request of the New Hampshire Public Defender. Their criminal caseload is increasing almost six percent a year and they are at the breaking point and I fear they may soon need to turn away cases. Their competence and commitment makes the fair administration of criminal justice in New Hampshire possible.

One of the finest and most valuable programs in the state court system is CASA, Court Appointed Special Advocates. They represent the interests of children who are caught up in abuse and neglect. They have over 400 volunteers, who do extraordinary work and they are seeking more money to hire more staff to supervise more volunteers. Their services are indispensable for children and the courts and their value far outstrips their costs. I urge you to support their work. Nobody is more important in the justice system than innocent children.

The second great challenge we face is technology. We are certainly making strides but I fear we are moving too slowly. Many small law firms have better technology than the courts where, in 2007, the vast majority of our judges do not

have direct access to the internet. We cannot long expect the “speed of light” world to bring its problems to the paper world of the state courts. We are all well served if the problems that arise in our communities are resolved in public courtrooms with public input. I fear that more and more cases are fleeing to the private justice system behind closed doors – no public record, no public access. Courts will play a diminished role if this trend continues, as will juries. The open resolution of disputes with public input is a core value of our Constitution. Technological advancements are essential to a viable public justice system and I hope you will look favorably on our technology request in this year’s budget.

The third challenge is for the judicial system to hire and retain good staff. We cannot long expect to get quality candidates for entry-level jobs paying \$20,500 a year. If health benefits are cut, I fear some good people may leave for a higher salary in the private sector and that many good people won’t apply. The demands on the staff are growing and we need to be certain that we can attract and keep skilled and capable people. In my visits to all of our courthouses, I have met almost all of our staff. They do the hard work of the justice system with too little recognition. They have met every challenge asked of them but I cannot keep asking without any relief in sight.

Finally, court security is a growing concern. Each morning when I drive up Route 93 to Concord, I ask myself, “Will today be the day?” Our security officers are paid \$65.00 a day, no benefits and no mileage. They provide their own weapon and their own blue blazer. They are extraordinary men and women but some do not have the experience or physical agility to be a major factor if an altercation or crisis ensues. Therefore, we fully support the sheriffs who propose to assume system-wide authority for court security. Their proposal will improve training and establish higher and more uniform standards for court security officers. We hope you will look favorably upon their pending legislation which is also supported by the chiefs of police and Attorney General Ayotte. In her testimony a few weeks ago before the Senate Judiciary Committee in support of the sheriffs’ security bill, the Attorney General said, “now is the time.” We need to reform court security and I hope we do so before tragedy strikes. Those most at risk are litigants and court staff – not the judges.

If we are to meet these great challenges to the administration of justice in New Hampshire, and if the courts are to meet the expectations of the people they serve, I respectfully suggest that we will need big ideas and constructive change. Small steps and timid progress will, in my judgment, be too little, too late. We need your help and your counsel and we need more resources.

As I leave this chamber this morning, I want to publicly thank the Speaker and the Senate President for their kind invitation to speak to all of you. I particularly appreciate Governor Lynch being here knowing how full his schedule must be.

Please know that my colleagues and I are committed to working closely with all of you to address the imposing challenges confronting the state courts and the people

they serve. The courts belong to the people and I am committed, as long as I have the privilege and obligations of my position, as I know all of you are, to advocate on the people's behalf. They have every right to expect it.

Thank you for listening and for the privilege of addressing your joint assembly in the people's house.